APPEAL NO. 021484
FILED JULY 11, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 13, 2002. The hearing officer determined that the appellant (claimant) has a 2% impairment rating (IR) as assessed by the designated doctor, Dr. N. The claimant appeals, arguing that the hearing officer's determination is against the great weight and preponderance of the evidence. The respondent (self-insured) files a response, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant's IR is 2% as assessed by the designated doctor. Section 408.125(c) provides that the report of the designated doctor is to be given presumptive weight regarding IR unless it is contrary to the great weight of the other medical evidence.

We have previously discussed the meaning of "the great weight of the other medical evidence" in numerous cases. We have held that it is not just equally balancing the evidence or a preponderance of the evidence that can overcome the presumptive weight given to the designated doctor's report. Texas Workers' Compensation Commission Appeal No. 92412, decided September 28, 1992. We have also held that no other doctor's report, including the report of the treating doctor, is accorded the special, presumptive status accorded to the report of the designated doctor. Texas Workers' Compensation Commission Appeal No. 92366, decided September 10, 1992; Texas Workers' Compensation Commission Appeal No. 93825, decided October 15, 1993.

In the present case, the Report of Medical Evaluation (TWCC-69) by the treating doctor, Dr. B, reflects that he assessed a 14% IR on October 27, 2000; a TWCC-69 by the designated doctor, Dr. N, reflects that he assessed a 2% IR on December 18, 2001. It is undisputed that the claimant reached statutory maximum medical improvement on October 27, 2000. The self-insured contends that Dr. B's testimony at the CCH overcomes the designated doctor's report. Dr. B testified that the claimant's IR should be between 6% to 7%. In addition, Dr. B testified that he disagreed with Dr. N's IR because he did not properly apply the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association, Table 49, Section (II)(B). A response to a letter of clarification by Dr. N dated November 7, 2001, states that "[a]fter review of the new documentation I have determined and it is my opinion that table 49 2b is not to be included in the [IR]."

Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. The hearing officer determined that "[t]he presumptive weight accorded to [Dr. N's] opinion has not been overcome by the great weight contrary medical evidence." Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Applying this standard, we find no basis to reverse the decision of the hearing officer.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SENIOR BENEFIT SPECIALIST
(ADDRESS)
(CITY) TEXAS (ZIP CODE).

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Robert E. Lang
Appeals Panel
Manager/Judge

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Michael B. McShane
Appeals Judge